IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9542 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJNIKANT A SACHANIA

Versus

UCO BANK

Appearance:

1. Special Civil Application No. 9542 of 1993

MR D.C.RAVAL FOR M.R. ANAND for the Petitioner

MS ARCHANA AMIN FOR MR TUSHAR MEHTA for the Respondent

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 28/08/2003

ORAL JUDGEMENT

1. The petitioner seeks a direction on the respondents to consider his case for the post of clerk from the date his immediate junior in the cadre of peons

was considered and promoted to that post and to promote him with all consequential benefits, including pay fixation, arrears of pay, seniority, future promotions etc., to be calculated on the basis of his promotion to the post of clerk from the date his immediate junior in the cadre was promoted.

2. The petitioner applied for the post of peon on 11-10-1977 when he was a non-matriculate. In the year 1978, he appeared for the S.S.C. examination with prior permission of the Board and passed examination successfully, as stated in paragraph 2 of the petition. He was appointed as peon by the bank under the letter dated 16-11-1979 and resumed on 26-11-1979.

2.1 The claim of the petitioner is that, as per the `promotion policy agreement' dated 13th April 1988 relating to promotions from subordinate cadre to clerical cadre, a peon who had completed two years of service after matriculation or SSLC, was eligible for promotion to clerical cadre under clause 4.6(ii). The petitioner had informed the respondent bank in the year 1980 that he was a matriculate, but despite such intimation, he was not considered for promotion to the post of clerk and treated as a non-matriculate. It is alleged that, on 17-8-1991, the petitioner applied for promotion to the post of clerk. According to the petitioner, he had completed more than 14 years of service and was possessing the qualification of S.S.C. and therefore, there was no reason for not considering him for the post of clerk. It is alleged that the representations (copies of which are at Annexure "F" collectively to the petition) made by the petitioner to the respondent authorities were not replied.

3. The respondent bank contested the petition by an affidavit-in-reply in which it was contended that the `promotion policy agreement' dated 13-4-1998, on which reliance was placed by the petitioner, was only a contract entered between the bank and the employees, and, any violation of the terms of such contract cannot be a subject matter of a petition under Article 226 of the Constitution. According to the respondent bank, so far as the post of peon is concerned, one of the restrictions prescribed in the recruitment rules was regarding higher educational qualification. With a view to see that candidates who could not obtain education upto S.S.C. level due to social, economical and other circumstances, can obtain employment in the subordinate cadre, it had been provided that a person, who is a matriculate / S.S.C. at the time of his applying for the post / test /

interview or at the time of joining service, was not entitled to be appointed as a peon. According to the bank, such a restriction was imposed in public interest to ensure employment to such disadvantaged persons who could not get sufficient education, because, the persons having S.S.C. / matriculation qualification, have several other employment avenues open to them.

4. The learned counsel for the petitioner argued that the petitioner was eligible for being considered for the post of clerk as per the recruitment rules. He pointed out the Clause 4.6(ii), under which, members of subordinate staff who have passed SSLC or matriculation but did not fall under category (i) of Clause 4.6, were eligible for promotion after completion of two years service after passing the S.S.C. or equivalent examination. He submitted that, despite his representations, the respondent bank continued to consider the petitioner as non-matriculate relying upon a declaration which was given by the petitioner under mistake, as informed by the petitioner himself to the authorities in his letter dated 1st October 1988, at Annexure "F" to the petition. He, therefore, submitted that the petitioner ought to have been considered for the post of clerk from the date on which he informed the authorities about his higher qualification which made him eligible under Clause 4.6(ii) of the recruitment rules.

5. The learned counsel for the respondent bank strongly contended that the petitioner cannot put up any claim for the post of clerk despite his having given a declaration that he shall not put up such a claim in view of the fact that he had not disclosed that he had already acquired the higher qualification of S.S.C. examination at the time when he came to be appointed. The learned counsel placed reliance on the circular dated 8th March 1979, by which one time waiver was offered to those who had suppressed their higher educational qualification at the time of their making of the application or at the time of test / interview / appointment in cases where such higher qualification had acted as a bar for entry into the respective cadres. She submitted that, as a matter of gesture of goodwill, such employees were given a final chance to declare their actual higher educational qualification before 31st March 1979, as mentioned in the said circular. In consideration of such declaration, the bank was to refrain from proceeding against such employees and as stated in the circular, such employees would not be in future entitled to or claim any benefit whatsoever that would otherwise accrue on the basis of the higher qualification so declared, excepting

increments. The learned counsel contended that though the petitioner was a non-matriculate at the time when he submitted his application in the year 1977, he had acquired the higher qualification by passing the S.S.C. examination before he joined the services on 26-11-1979. It was submitted that the petitioner had, at the time of joining service, deliberately suppressed that he was not entitled to join it as a peon in view of his having acquired higher qualification of S.S.C. in October 1978. The petitioner, by his application dated 29-9-1980 disclosed to the bank, that he had acquired the higher qualification, after having secured the employment and suppressing the fact that he was having that higher qualification at the time of joining the service.

6. Though it has been contended that the petitioner had suppressed the fact that he had acquired the higher qualification of S.S.C. at the time of his appointment as a peon, it is not shown as to under which rule provision higher qualification would have acted as a bar for entry into the cadre of peons. The petitioner was appointed by order dated 16-11-1979 after the issuance of the circular dated 8th March 1979, which by its very nature was applicable to only those who could have made a declaration not later than 31st March 1979. Despite the petitioner's having sent representations since 1991, the respondent authorities did not consider the contentions which were raised in those representations, including that his case did not fall within the ambit of the circular dated 8th March 1979, and that, his declaration was erroneously taken.

6.1 It appears from the record that the zonal office of the bank wrote a letter on 24th December 1988 to the Head Office, a copy of which is at Annexure "E" to the petition, in paragraph 2 of which, it was written that the Head Office had earlier advised that the circulars dated 8th March 1979 and 28th August 1980 were meant only for those employees who were already in the employment of the bank as on 8th March 1979 and who did not disclose the higher educational qualification earlier or suppressed the higher educational qualification at the time of joining the bank. The request of the petitioner in his representation for considering inclusion of his higher educational qualification in the service record was earlier turned down on the ground that he was not in the bank's employment on 8th March 1979. In the said letter, it was also mentioned that the petitioner had now applied stating that he had inadvertently responded to the said circulars, and he cannot be said to have suppressed the higher educational qualification at the

time of recruitment and therefore, his higher educational qualification should be brought on the service record. The zonal office opined under the said letter that there was nothing on the record to show that the petitioner willfully suppressed his higher educational qualification on 16-11-1979 i.e. the date of his appointment. It was also stated that the Head Office had earlier decided his case only on the ground of the date of applicability of the circulars without going into the merits of the case as to whether he was or not eligible to apply in response to the said circular dated 8th March 1979 since he was not on the pay-roll of the bank on that date.

6.2 It is not shown as to what response the Head office gave to this letter. It is evident that the requirement of making a declaration under the circular dated 8th March 1979, which was specifically applicable only to those who could have made declaration not later than 31st March 1979, could never have been made applicable to the petitioner, who was recruited much later on 16-11-1979. There was no need for the petitioner to make any such declaration which could have been made by the employees who were already in service and who could have made declaration not later than 31st March 1979, as mentioned in the circular. Therefore, resort to the said circular or any declaration made thereunder erroneously by the petitioner for the purpose of denying his being considered for promotion as clerk, despite his having adequate educational qualification as per Clause 4.6(ii) of the rules of recruitment to the post of clerk, was uncalled for and erroneous. The action of the respondent bank in not considering the petitioner's case for promotion to the post of clerk is, therefore, against the provisions governing promotion to that cadre, particularly Clause 4.6(ii) thereof, resulting in denial of the fundamental right to equality guaranteed by Articles 14 and 16 of the Constitution to the petitioner.

7. In the result, the petitioner succeeds in making out a case that he ought to have been considered for the promotional post of clerk as per Clause 4.6(ii) of the provisions governing promotion from subordinate cadre to clerical cadre, a copy of which is at Annexure "A" to the petition. The respondent bank is, therefore, directed to consider the petitioner's case accordingly for promotion as clerk, as per the rules of promotion, from the date on which he became due under Clause 4.6(ii) on the basis of his higher educational qualification and as per the said provisions governing rpomotion, from the date on which his immediate junior came to be promoted to such cadre.

This exercise should be undertaken expeditiously and necessary orders in accordance with law and the rules will be made by the respondent bank at the earliest, preferably within one month from the date of the receipt of the writ of this order. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

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